

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF NEW HAMPSHIRE, INC.	:	
	:	
Complainant:	:	
	:	CASE NO. <u>S-0303:1</u>
and	:	
	:	
CENTRALIZED DATA PROCESSING DEPARTMENT, STATE OF NEW HAMPSHIRE	:	DECISION NO. <u>780019</u>
	:	
Respondent:	:	
	:	

APPEARANCES

Representing the Complainant, State Employees' Association of New Hampshire, Inc.:

Richard E. Molan, Assistant Executive Director

Representing the Respondent, State of New Hampshire:

James C. Sargent, Jr., Assistant Attorney General, Division of
Legal Counsel

BACKGROUND

A collective bargaining agreement was made and entered into between the State Employees' Association of New Hampshire, Inc. and the Centralized Data Processing Department of the State of New Hampshire and signed by Damon A. Russell, President, Denis W. Parker, Executive Director and Richard E. Molan, Negotiating Committee Chairman, for the State Employees' Association and by Robert L. Brunelle, Chairman of the Negotiating Committee, John J. Ratoff, State Negotiator and Howard L. Berry, Member of the Negotiating Committee, on the 22nd day of October 1977; said signed agreement by and between the parties incorporated Article VI, Overtime, and Article VII, Basic Work Week.

On February 28, 1978 PELRB received a complaint of unfair labor practice against the Centralized Data Processing Department filed by Richard E. Molan of SEA alleging violation of the agreement by unilaterally changing the work schedule for employees of the department from two twelve-hour shift schedule to a three-shift schedule in derogation of their obligation to negotiate with the complainant with respect to terms and conditions of employment.

PELRB set April 26, 1978 as the date for a hearing on the charges and evidence presented by SEA that on June 2, 1977 a memo from John C. Lennox, Operations Manager, advised Ben Otterson, Supervisor of Computer Operators that effective on June 6, 1977, all computer operators would be shifting to the six day, 12 hour work schedule and that the schedule would remain in effect for two months, thru August 5, 1977 at which time an evaluation would be made to determine if the schedule was accomplishing its purpose. Memo

*unilateral
shift in
work hours
by employer*

further indicated that after August 5th, the computer operators would be afforded an opportunity to voice their opinions on the change, opinions would then be taken into consideration when a determination was finally made to either continue or discontinue the new scheduling.

Evidence was also presented on the November 21, 1977 memo from the Supervisor of Computer Operations, Ben Otterson, to all operators notifying them of the shift schedule beginning on December 5, 1977. Inter-department communication from Harold B. Crapo, Jr., Operations Manager, directed to all computer operators informing them that the December schedule as posted was a continuation of the 12-hour shifts until January 1, 1978 due to phased installation of new equipment was submitted in evidence.

Attorney Sargent emphasized the case of SEA v. State Prison which is currently before the Supreme Court and due for oral arguments some time next month and which would have a direct bearing on the CDP case and suggested a "wait and see" period. However, he clearly felt that the altering of schedule was management prerogative and the shift change was meant to be temporary in nature and at the time, negotiations were not completed.

He further stated that it was the State's intention never to be bound by any configuration and that SEA had missed its opportunity to bargain on the configuration; that the contract did not cover every issue and management had a right to make changes if in the best interest of the State.

Although decision from the Supreme Court might be enlightening to all concerned, both parties felt strongly that a decision on this case should not be delayed pending the outcome of the Prison case.

FINDINGS OF FACT

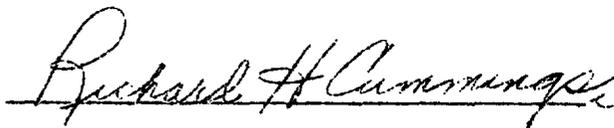
1. The State Employees' Association of New Hampshire is the certified representative for the employees of the Centralized Data Processing Department, recognition as exclusive representative granted to them for all classified employees by New Hampshire Supreme Court Decision, SEA v. N. H. PELRB, No. 7540, November 9, 1976.
2. A collective bargaining agreement between SEA and the Centralized Data Processing Department, State of New Hampshire, was executed on October 22, 1977 and will remain in effect through June 30, 1979.
3. Provisions exist in the agreement, Article VII, outlining the regular work week for every full time clerical, supervisory and professional employee in the state classified service in each unit.

4. Agreement between the parties also contains a mechanism for resolution of grievances and disputes under Article XIV entitled "Grievance Procedure" and outlines steps to be followed in such cases.
5. First change in schedule was proposed in June but not implemented until after final negotiations with CDP were completed and prior to the execution of the agreement.

DECISION AND ORDER

The Board considered all the testimony and evidence in this case and, as in the case of the State Prison, maintains its position that shift rotation does constitute a mandatory subject of negotiations under RSA 273-A; however, recognizing that in many cases there might be substantial basis for a decision to alter work schedules and changes in the CDP Department case were being considered and were in the process of implementation prior to the final negotiations, the Board orders, as follows:

PELRB declines to rule on the unfair labor practice charge in this case and, remands the issue to the parties who are ordered to follow the Grievance Procedure, Article XIV outlined in the existing agreement by and between the State of New Hampshire and the State Employees' Association dated October 22, 1977.



RICHARD H. CUMMINGS, ACTING CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 2nd day of June, 1978

Unanimous vote. Present and voting: Acting Chairman Richard H. Cummings, Joseph B. Moriarty and James C. Anderson. Also present, Clerk Evelyn C. LeBrun. Absent: Chairman Edward J. Haseltine and Edward L. Allman.